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7 Attorneys for Plaintiffs, UNITE EUROTHERAPY INC. and
UNITE EUROTHERAPY LTD
8

9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 UNITE EUROTHERAPY, INC. and
12 UNITE EUROTHERAPY LTD,

13 Plaintiffs,

14 vs.

15 COSMETIC HAIRCARE BV, THEMA
16 HAIRCARE BV, HOOGE BEHEER
17 BV, TIME/SYSTEM BENELUX BV,
18 MOBIPRO BENELUX BV,

19 Defendants.
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Case No. '13CV1144 MMABGS

**UNITE EUROTHERAPY, INC.'S
COMPLAINT:**

(1) Breach of Contract

(2) Unfair Competition

(3) Trademark Infringement

(4) Trademark Dilution

**(5) Intentional Interference with
Prospective Economic Advantage**

**(6) Negligent Interference with
Prospective Economic Advantage**

JURY DEMAND

1 Plaintiffs UNITE EUROTHERAPY, INC. and UNITE EUROTHERAPY LTD
2 (collectively, "UNITE"), for their Complaint against Defendants COSMETIC
3 HAIRCARE BV, THEMA HAIRCARE BV, HOOGE BEHEER BV,
4 TIME/SYSTEM BENELUX BV, and MOBIPRO BENELUX BV (collectively,
5 "Defendants") allege and state as follows:

6 **THE PARTIES**

7 1. Plaintiff UNITE EUROTHERAPY, INC. is a corporation organized and
8 existing under the laws of the State of California with its principal place of business
9 located at 1255 Keystone Way, Suite 106, Vista, CA 92081.

10 2. Plaintiff UNITE EUROTHERAPY LTD is a limited company organized
11 and existing under the laws of Britain with its principal place of business located at
12 Third Floor, 24 Chiswell Street, London, United Kingdom. UNITE
13 EUROTHERAPY LTD is the sales agent/European Union liaison for Plaintiff
14 UNITE EUROTHERAPY, INC.

15 3. Defendant COSMETIC HAIRCARE BV is a private company with
16 limited liability organized and existing under the laws of the Netherlands with its
17 statutory seat and principal place of business located at Sluisweg 196 5237 MZ 's
18 Hertogenbosch, Netherlands. COSMETIC HAIRCARE BV is a wholly-owned
19 subsidiary of Defendant HOOGE BEHEER BV.

20 4. Defendant THEMA HAIRCARE BV is a private company with limited
21 liability organized and existing under the laws of the Netherlands with its statutory
22 seat and principal place of business located at Sluisweg 196 5237 MZ 's
23 Hertogenbosch, Netherlands. THEMA HAIRCARE BV is a wholly-owned
24 subsidiary of Defendant HOOGE BEHEER BV.

25 5. Defendant TIME/SYSTEM BENELUX BV is a private company with
26 limited liability organized and existing under the laws of the Netherlands with its
27 statutory seat and principal place of business located at Sluisweg 196 5237 MZ 's
28

1 Hertogenbosch, Netherlands. TIME/SYSTEM BENELUX BV is a wholly-owned
2 subsidiary of Defendant HOOGE BEHEER BV.

3 6. Defendant MOBIPRO BENELUX BV is a private company with limited
4 liability organized and existing under the laws of the Netherlands with its statutory
5 seat and principal place of business located at Sluisweg 196 5237 MZ 's
6 Hertogenbosch, Netherlands. MOBIPRO BENELUX BV is a wholly-owned
7 subsidiary of Defendant HOOGE BEHEER BV.

8 7. Defendant HOOGE BEHEER BV is a private company with limited
9 liability organized and existing under the laws of the Netherlands with its statutory
10 seat and principal place of business located at Sluisweg 196 5237 MZ 's
11 Hertogenbosch, Netherlands. HOOGE BEHEER BV is the parent holding company
12 for Defendants COMETIC HAIR CARE BV, THEMA HAIRCARE BV,
13 TIME/SYSTEM BENELUX BV and MOBIPRO BENELUX BV. Defendants
14 COSMETIC HAIR CARE BV and HOOGE BEHEER BV are referred to collectively
15 herein as "CHC."

16 8. On information and belief, each of the Defendants was the agent of each
17 of the others, and committed the acts or omissions alleged herein on behalf of each of
18 the other Defendants. On information and belief, each of the Defendants authorized,
19 approved, ratified or directed the acts or omissions of each of the other Defendants
20 that are alleged herein.

21 **JURISDICTION AND VENUE**

22 9. This Court has subject matter jurisdiction over the claims for trademark
23 infringement and unfair competition under the Lanham Act, including 28 U.S.C. §§
24 1331 and 1338. This court also has diversity jurisdiction over all claims pursuant to
25 28 U.S.C. § 1332, because Plaintiff UNITE EUROTHERAPY, INC. is a citizen of
26 and resides in California and Plaintiff UNITE EUROTHERAPY LTD is a citizen of
27 and resides in the United Kingdom, whereas Defendants are citizens of and reside in
28 the Netherlands, and the amount in controversy exceeds \$75,000. This Court has

1 supplemental or pendant jurisdiction over any remaining claims under 28 U.S.C. §§
2 1367 and 1338(b), as they are related to the federal claims, and arise out of the same
3 case and controversy as the federal claims in this action. As discussed below, UNITE
4 owns Benelux, United Kingdom, European Union and United States trademarks and
5 copyrights, therefore UNITE has personal jurisdiction over Defendants under Article
6 4 of the General Agreement on Tariffs and Trade ("GATT") Agreement on Trade
7 Related Aspects of Intellectual Property Rights ("TRIPS").

8 10. Personal jurisdiction and venue is proper in this judicial district,
9 including under 28 U.S.C. sections 1391(b) and (c) and 1400(b), because a substantial
10 part of the events or omissions giving rise to the claims occurred in the district and
11 Defendants are subject to personal jurisdiction in this forum and judicial district by,
12 among others, their repeated availment and direction of its activities toward this
13 district. CHC directed its activities at this forum and district by acting as a distributor
14 of UNITE products and purposefully injured UNITE and infringed UNITE's marks
15 while knowing UNITE to be located in San Diego, California. The remaining
16 Defendants purposefully injured and infringed UNITE's trademarks while knowing
17 UNITE to be located in San Diego, California.

18 **GENERAL ALLEGATIONS**

19 11. Through extensive efforts, UNITE developed a premium, boutique line
20 of professional hair care products. Each underwent extensive testing and research, so
21 as to ensure superior performance and acceptance by professional salons.

22 12. UNITE holds a Benelux trademark registration for the mark UNITE
23 EUROTHERAPY issued by the Benelux Office of Intellectual Property, BOIP No.
24 1050879, along with other Benelux, US and international rights in its UNITE
25 EUROTHERAPY mark.

26 13. In addition, UNITE owns European Union registered trademarks for the
27 names of two UNITE products, CONUNDRUM PASTE, Reg. No. 011078136 and U
28 LUXURY, Reg. No. 011170438. UNITE also owns United States registered

1 trademarks for the UNITE brand, Reg. No. 3930994, UNITE EUROTHERAPY, Reg.
2 No. 2920563, twenty-five other United States registered trademarks covering various
3 UNITE product names, logos and packaging designs, and copyright registrations for
4 UNITE product packaging, logos and the content and design of its website. UNITE
5 also owns United Kingdom registered trademarks, including a registered trademark in
6 the UNITE EUROTHERAPY brand, Reg. No. 2412967. Collectively, UNITE's
7 trademarks and copyrights that are registered in the Benelux, European Union, United
8 Kingdom and United States are referred to as "UNITE IP."

9 **CHC Becomes a Non-Exclusive Distributor of UNITE Products in the Benelux**

10 14. In late 2009, UNITE and CHC began discussing the possibility of CHC
11 becoming a distributor of UNITE hair care products in Belgium and the Netherlands
12 (collectively, "Benelux"). After negotiations concerning the details of the parties'
13 relationship, the parties ultimately reached an oral agreement whereby CHC would
14 become a non-exclusive distributor of UNITE hair care products and obtain a non-
15 exclusive license for the UNITE IP in the Benelux territory, subject to various
16 additional provisions.

17 15. On November 18, 2009, UNITE's President, Mr. Andrew Dale, hand-
18 delivered CHC's co-owner, Mr. Dick Damen, a letter memorializing the terms and
19 conditions of CHC's distributor relationship with UNITE (the "Distribution
20 Agreement") that the parties had previously agreed upon, which is attached as Exhibit
21 1 and incorporated herein by reference. The Distribution Agreement confirms that
22 UNITE granted CHC non-exclusive Benelux distribution rights for UNITE products
23 and a non-exclusive license to use the UNITE IP, subject to certain conditions.

24 16. The parties have never disputed the validity of the terms and conditions
25 of the Distribution Agreement and at no point during the parties' relationship did
26 CHC, in any manner, dispute or question the validity of these terms.

27 17. The Distribution Agreement contains, among others, purchase and
28 invoicing terms, defines CHC's non-exclusive territory, and requires CHC to provide

1 UNITE with monthly sales reports. In addition, the Distribution Agreement prohibits
2 CHC from selling UNITE products at any price below the agreed upon suggested
3 salon cost or from distributing additional brands within the territory without prior
4 notice to and consent of UNITE. The Distribution Agreement further requires CHC
5 to immediately cease selling UNITE products in the event either UNITE or CHC
6 chooses to terminate the Agreement.

7 18. The Distributor Agreement states the parties' agreement is governed by
8 California law.

9 19. UNITE repeatedly informed CHC that CHC's full compliance with the
10 terms of the parties' relationship, as confirmed by the Distribution Agreement, was
11 essential for UNITE to permit CHC to continue operating as its distributor.

12 20. Moreover, CHC orally assented to and ratified the terms in the
13 Distribution Agreement, both before and after UNITE prepared the Distribution
14 Agreement.

15 **CHC Fails to Maintain UNITE Sales, Despite Being Armed**
16 **with UNITE's Customer Database**

17 21. Along with the Distribution Agreement, UNITE provided CHC its entire
18 Benelux customer database, which contained valuable contact information and
19 monthly sales figures for approximately seventy salons (the "Customer Database").
20 UNITE provided CHC the Customer Database in reliance on CHC's agreement to act
21 as a distributor of UNITE products, as memorialized in the Distribution Agreement.
22 The Customer Database showed the salons were collectively purchasing
23 approximately 22,000-25,000 Euro (app. 26,500-33,000 USD) worth of UNITE
24 products each month. At that time, and in return, CHC agreed to only use the
25 Customer Database for the purpose of selling UNITE products.

26 22. Despite being armed with a list of approximately seventy salons that
27 were already UNITE customers, sales of UNITE products in Benelux decreased while
28 CHC acted as a distributor for UNITE. CHC even proved unable to maintain the

1 sales volume through the existing UNITE customers in the Customer Database that
2 UNITE had expended significant resources to establish before CHC's involvement
3 with the brand.

4 **CHC Repeatedly Breaches the Terms of the Distributor Relationship**

5 23. UNITE became aware that CHC was deeply discounting the sales price
6 of its products—by as much as forty-two-and-a-half percent—which damaged the
7 premium UNITE brand and was directly contrary to the Distributor Agreement.

8 24. In addition, during the parties' relationship, CHC failed to regularly
9 provide required sales reports to UNITE.

10 25. UNITE eventually learned that CHC's sales force had dwindled from a
11 team that initially consisted of one sales manager and five sales associates to a team
12 of only three part-time sales associates (with no manager). On information and
13 belief, CHC's sales efforts were confined to calling prospective salons
14 (telemarketing) and did not include personal visits to the salons in the territory.
15 Personal visits are industry custom and were a minimum expectation.

16 26. On information and belief, CHC also purchased the rights to distribute
17 competitive hair care products in the Benelux territory, including those made by
18 Alterna, and began distributing these products to, among others, the UNITE
19 customers in the Customer Database—in direct violation of the terms of the
20 Distribution Agreement.

21 27. On multiple occasions, UNITE contacted CHC to discuss its continuing
22 failure to adequately increase sales in the Benelux. In response, CHC repeatedly
23 assured UNITE that it would improve sales—to no avail.

24 **UNITE Gives CHC One Last Chance**

25 28. In early 2013, UNITE learned for the first time that CHC was supplying
26 over 112 salons, yet only achieved sales of approximately \$175,000 during 2012. At
27 this point, UNITE concluded that CHC's average sales per salon were much too low
28

1 and that, in light of this information, CHC's performance as a distributor was
2 unacceptable.

3 29. As a result, UNITE contacted CHC and requested a meeting to discuss
4 the future of the parties' relationship. The parties met on February 4, 2013 in
5 Eindhoven, Netherlands, and CHC agreed, in writing, to provide UNITE with a full
6 evaluation of its distribution performance and a detailed plan showing how CHC
7 intended to improve sales of UNITE products in Benelux by the end of March 2013.

8 30. During the meeting, the parties agreed that CHC would improve sales of
9 UNITE products in Benelux by at least thirty percent during February and March
10 2013. UNITE specifically warned CHC that if it failed to increase its sales of UNITE
11 products in Benelux, UNITE would have no choice but to terminate the CHC's
12 distributorship. In a February 6, 2013 email, UNITE confirmed the substance of the
13 discussions with CHC during the February 4th meeting, including CHC's promise to
14 improve sales by thirty percent for February and March 2013.

15 31. On information and belief, CHC stockpiled UNITE products to create
16 the false impression that it was increasing sales. CHC then sold these products at an
17 enormous discount, so the benefit to UNITE was, at best, minimal.

18 **UNITE Terminates CHC's Distributorship**

19 32. Despite UNITE's demands and CHC's promises, by April 2013 it
20 became clear to UNITE that CHC did not intend to create a plan for improving
21 UNITE sales or actually raise sales by thirty percent in the Benelux territory.
22 Meanwhile sales of UNITE products in Benelux remained stagnant.

23 33. As a result of the lackluster sales and CHC's material contractual
24 breaches, on April 19, 2013, UNITE terminated CHC's distributorship, notifying
25 CHC in writing. UNITE offered, as specified in the Distribution Agreement, to
26 repurchase CHC's remaining stock of UNITE products.

27 34. On information and belief, once it received UNITE's notice of
28 termination of its distributorship, CHC sent a letter to UNITE's Benelux customers

1 without UNITE's permission, which informed them that it would no longer carry
2 UNITE products, and instead, recommended competitive products to these customers.

3 35. On May 3, 2013, UNITE's Netherlands counsel sent a letter to CHC
4 informing it that it had irreparably harmed UNITE's brand and damaged the
5 commercial interests of UNITE in Benelux and throughout Europe. The letter also
6 demanded that CHC immediately cease any sales of UNITE products and any and all
7 use of the UNITE IP, including the "UNITE EUROTHERAPY" trademark, the
8 UNITE logo and the UNITE packaging.

9 36. On information and belief, CHC continued to sell UNITE products for at
10 least ten days following UNITE's termination of its distributorship, in violation of the
11 terms of the Distribution Agreement.

12 **Defendants' Continuing Infringement of the UNITE IP**

13 37. Defendants continue to use the UNITE IP without UNITE's permission,
14 including on its websites, <http://www.cosmetichaircare.nl> and
15 <http://www.unitebenelux.nl> and the Facebook page
16 <https://www.facebook.com/UniteHairBenelux>, where the UNITE IP is prominently
17 displayed. Printouts from these three sites are attached hereto as Exhibits 2-4.
18 According to publicly available domain registration information, attached as Exhibit
19 5, the website <http://www.cosmetichaircare.nl> is owned by Defendant MOBIPRO
20 BENELUX BV.

21 38. UNITE also recently learned that CHC has a Netherlands-based
22 corporate subsidiary named Thema Hair Care B.V. This entity also uses the UNITE
23 IP on its website, www.thema-haircare.nl. A printout showing this website is
24 attached as Exhibit 6. CHC never told UNITE about this website or subsidiary and
25 UNITE never gave its permission for CHC to allow its subsidiary to use the UNITE
26 IP as a sub-licensee. According to publicly available domain registration
27 information, attached as Exhibit 7, the website www.thema-haircare.nl is owned by
28 Defendant TIME/SYSTEM BENELUX BV.

FIRST CLAIM FOR RELIEF
BREACH OF CONTRACT
(against Defendants Cosmetic Haircare BV and HOOGE BEHEER BV)

39. UNITE reasserts all allegations in this Complaint as if stated in full herein.

40. The parties entered into an agreement, as confirmed by the Distribution Agreement, whereby CHC agreed to act as non-exclusive distributor of UNITE products in Benelux.

41. UNITE performed all obligations under the agreement, and is excused from all further performance.

42. CHC materially breached the terms of its distributor relationship with UNITE by, among others, (1) selling UNITE products at a price below the suggested salon cost; (2) failing to provide UNITE with regular, monthly sales reports; (3) selling competitive products in Benelux, including to customers in UNITE's Customer Database, without first notifying UNITE; (4) failing to immediately cease sales of UNITE products upon termination of the distributor relationship; and/or (5) refusing to stop the use of the UNITE Brand, including on its website, following the termination of its distributor relationship.

43. As a direct and proximate result of these breaches, UNITE has been damaged in an amount to be determined at trial, but exceeding \$75,000.

44. Further, CHC has been unjustly enriched by its sales of hair care products to UNITE customers, as listed in the Customer Database. But for CHC's actions, including CHC's disparagement of UNITE's products, UNITE would have made significantly more sales to these customers.

SECOND CLAIM FOR RELIEF
UNFAIR COMPETITION
LANHAM ACT (15 U.S.C. § 1125), COMMON LAW,
CAL. BUS. & PROF. CODE § 17200 ET SEQ
(against all Defendants)

45. UNITE reasserts all allegations in this Complaint as if stated in full herein.

1 46. Defendants have engaged in unfair competition by at least the acts
2 alleged herein.

3 47. Defendants' acts and omissions alleged herein constitute unfair business
4 practices because the harm of these business practices outweighs the utility, if any, of
5 these business practices, and are unscrupulous and injurious to consumers.

6 48. Defendants' acts and omissions alleged herein constitute unlawful
7 business practices because Defendants' conduct is forbidden by multiple laws,
8 including but not limited to 15 U.S.C. § 1125(a), as well as the common laws, the
9 laws of the State of California, the laws of the European Union and the laws of the
10 United States.

11 49. Defendants' acts and omissions alleged above constitute fraudulent
12 business practices because consumers are likely to be deceived as a result of
13 Defendants' conduct.

14 50. As a direct and proximate cause, UNITE has suffered compensatory and
15 consequential damages in an amount to be proven at trial, and is entitled to disgorge
16 Defendants' profits. This damage includes loss of goodwill and dilution of its
17 international UNITE brand.

18 51. As a direct and proximate result of Defendants' wrongful acts, UNITE
19 has suffered and continues to suffer pecuniary losses and irreparable injury to its
20 business reputation and goodwill, including in the form of dilution and continued
21 harm to goodwill of its international UNITE brand. As such, UNITE's remedies at
22 law are not adequate to compensate for injuries inflicted by Defendants. UNITE is,
23 as a result, entitled to temporary, preliminary and permanent injunctive relief.

24 52. UNITE is informed and believes, and on that basis alleges that
25 Defendants' actions were willful, intentional, malicious, deliberate and in bad faith,
26 such that punitive damages are justified and reasonable, at an amount to be proved at
27 trial.

28 53. UNITE is informed and believes, and on that basis alleges that

1 Defendants willfully, intentionally, maliciously, deliberately and in bad faith
2 infringed UNITE's brand, thus this case qualifies for enhanced damages and
3 attorneys' fees pursuant to 15 U.S.C. § 1117.

4 **THIRD CLAIM FOR RELIEF**
5 **TRADEMARK INFRINGEMENT**
6 **(against all Defendants)**

7 54. UNITE reasserts all allegations in this Complaint as if stated herein.

8 55. As detailed herein, UNITE is the owner of the UNITE IP, including a
9 Benelux trademark registration for the UNITE EUROTHERAPY trademark, BOIP
10 No. 1050879.

11 56. CHC, as a former distributor of UNITE products, has an affirmative duty
12 to distinguish itself so as to avoid any misrepresentation that it is still a part of
13 UNITE's distribution system. CHC may also not do anything to cause confusion as
14 to its present affiliation.

15 57. CHC has failed to affirmatively distinguish itself to avoid the false
16 impression that it is still a part of UNITE's distribution system, and on information
17 and belief has purposefully acted under the imprimatur to hair salons, including via
18 its website, that it still has an affiliation or sponsorship with UNITE, and that its
19 actions are within its authorized affiliation to the UNITE brand.

20 58. Defendant THEMA HAIRCARE BV, as operator of the website
21 www.thema-haircare.nl, which prominently displays the UNITE IP, is likewise liable
22 for trademark infringement due to its use of the UNITE IP without UNITE's
23 permission.

24 59. Defendant TIME/SYSTEM BENELUX BV is also liable for trademark
25 infringement as owner of the website www.thema-haircare.nl.

26 60. Defendant MOBIPRO BENELUX BV, as owner of the website
27 <http://www.cosmetichaircare.nl>, which prominently displays the UNITE IP, is
28 likewise liable for trademark infringement due to its use of the UNITE IP without
UNITE's permission.

61. As a result, on information and belief, hair salons have been confused and are likely to be confused into believing that CHC's attempts to trade-out for a competitor's products and even to disparage certain products within the UNITE brand were all with the tacit or express approval of UNITE.

62. As a result of Defendants use of UNITE IP on their websites, consumers are likely to be confused into believing that Defendants are affiliated with, associated with, and/or approved by UNITE or are authorized retailers of UNITE products.

63. As a direct and proximate result of the infringement of its valuable mark, UNITE has suffered compensatory and consequential damages in an amount to be proven at trial.

64. UNITE is informed and believes, and on that basis alleges that Defendants willfully, intentionally, maliciously, deliberately and in bad faith infringed UNITE's marks.

65. UNITE's remedies at law are not adequate to compensate for injuries inflicted by Defendants, accordingly, UNITE is entitled to temporary, preliminary and permanent injunctive relief prohibiting any further trademark infringement.

66. As a result of Defendants' willful infringement, UNITE is entitled to disgorge the profits Defendants unlawfully obtained.

FOURTH CLAIM FOR RELIEF
TRADEMARK DILUTION
(against all Defendants)

67. UNITE reasserts all allegations in this Complaint as if stated herein.

68. UNITE has a reputation in the Benelux territory, the European Union, the United Kingdom and the United States, and Defendants' use of the distinctive UNITE EUROTHERAPY mark is without due cause, but rather takes unfair advantage of, and is detrimental to, the distinctive character of the UNITE IP, including the UNITE EUROTHERAPY trademark.

69. UNITE's trademarks, including UNITE's UNITE EUROTHERAPY trademark, are distinctive marks and acquired such status prior to the time Defendants

1 began their use, because before that time:

- 2 a. The mark had a high degree of inherent and acquired distinctiveness;
- 3 b. The mark had been used exclusively by UNITE for an extended duration
- 4 for the goods and services indicated by UNITE, in the relevant
- 5 territories;
- 6 c. The advertising and publicity received by the mark has been significant;
- 7 d. The geographical trading area of the mark encompassed at least the
- 8 Netherlands and Belgium;
- 9 e. There were many highly prominent channels UNITE used for the goods
- 10 and services under the mark, and Defendants have since chosen to use
- 11 the ubiquitously stationed medium of the Internet;
- 12 f. The mark was highly recognized in the European Union, including
- 13 Benelux and the United Kingdom, and in the United States and was
- 14 highly affiliated with UNITE;
- 15 g. On information and belief, there were no other parties that use the mark
- 16 for similar goods and services as UNITE; and

17 70. Such injury is irreparable, and as a result, UNITE is entitled to
18 temporary, preliminary and permanent injunctive relief preventing further dilution by
19 Defendants.

20 71. By reason of such wrongful acts, UNITE is and was, and will be in the
21 future, deprived of, among others, the profits and benefits of business relationships,
22 agreements, and transactions with various third parties and/or prospective business
23 relationship. Defendants have wrongfully obtained profits and benefits instead of
24 UNITE. To the extent available, UNITE is entitled to compensatory damages and
25 disgorgement of Defendant's said profits, in an amount to be proven at trial, but
26 exceeding \$75,000.

FIFTH CAUSE OF ACTION
**INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC
ADVANTAGE**
(against Defendants Cosmetic Haircare BV and HOOGE BEHEER BV)

72. UNITE reasserts all allegations in this Complaint as if stated herein.

73. UNITE had numerous third-party existing business relationships with its clients located in Benelux, including those in its Customer Database.

74. There was a reasonable probability of future economic benefit from these business relationships, demonstrated by, among other things, UNITE's past economic benefits from similar business relationships, and the status of the relationships prior to CHC's interference.

75. CHC interfered with these existing and prospective business relationships by selling UNITE products for well-below the suggested salon cost, which caused UNITE's customers to buy from CHC at a heavy discount instead of directly from UNITE and/or demand discounts because of CHC's conduct.

76. CHC's conduct was wrongful, separate and apart from the interference itself, in that it violated the terms of the parties' relationship, as confirmed by the Distribution Agreement, which explicitly prohibited any sales of UNITE products at any price below the suggested salon cost and/or sales of non-UNITE products to UNITE customers. CHC knew such conduct would interfere with UNITE's relationship with its customers.

77. CHC knew and intended to interfere with CHC's prospective economic advantage, and interference with these prospective economic relationships was actually and proximately caused as a result. On information and belief, CHC knew such interference was substantially certain to result.

78. Such acts, as alleged above, were done with malice, oppression and/or fraud, entitling UNITE to exemplary and punitive damages, in addition to compensatory damages to be established at trial but exceeding \$75,000.

SIXTH CLAIM FOR RELIEF
NEGLIGENT INTERFERENCE WITH PROSPECTIVE ECONOMIC
ADVANTAGE
(against Defendants Cosmetic Haircare BV and HOOGE BEHEER BV)

79. UNITE reasserts all allegations in this Complaint as if stated herein.

80. UNITE had numerous third-party existing business relationships with its clients located in Benelux, including those in the Customer Database.

81. There was a probability of future economic benefit from these business relationships, demonstrated by, among other things, UNITE's past economic benefits from similar business relationships, and the status of the relationships prior to CHC's interference.

82. CHC interfered with these existing and prospective business relationships by selling UNITE products for well-below the suggested salon cost, as agreed to by CHC and UNITE, and selling non-UNITE products to UNITE's customers.

83. CHC owed a duty to UNITE to refrain from selling UNITE products for less than the agreed upon suggested salon cost and from selling non-UNITE products to UNITE's customers, as confirmed by the Distribution Agreement. CHC knew was relying on CHC not to engage in such conduct. The adverse effect on UNITE's business was foreseeable by CHC and CHC's conduct could not be performed without a direct effect on UNITE's business.

84. CHC should have known that its conduct would interfere with CHC's prospective economic advantage, and CHC's interference with these prospective economic relationships was actually and proximately caused as a result. On information and belief, CHC knew such interference was substantially certain to result.

85. As a result, UNITE is entitled to compensatory damages to be established at trial but exceeding \$75,000.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray this Court awards:

1. Judgment in favor of Plaintiffs and against Defendants on all claims;
2. An order temporarily and permanently enjoining Defendants from trademark infringement, dilution and unfair competition, as set forth in this complaint, including from selling any UNITE-branded products;
3. Compensatory damages in an amount to be determined at trial;
4. Defendants' unjust enrichment and profits, for each claim that so permits;
5. Treble damages for willful infringement against Defendants;
6. Statutory damages as allowed by law against Defendants;
7. Exemplary and punitive damages in an amount to be determined at trial;
8. Restitution as allowed by law;
9. Pre-judgment interest at the legally allowable rate on all amounts owed against Defendants;
10. Costs, expenses, and reasonable attorneys' fees pursuant to, among others, 15 U.S.C. § 1117 et seq. and/or the common law against Defendants; and
11. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

UNITE, under Rule 38 of the Federal Rules of Civil Procedure, requests a trial by jury on any and all issues triable by a jury.

Dated: May 8, 2013

MINTZ LEVIN COHN FERRIS GLOVSKY
AND POPEO PC

By s/Andrew D. Skale
Andrew D. Skale, Esq.
Benjamin L. Wagner, Esq.
Eric J. Eastham, Esq.

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EUROTHERAPY LTD